

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA

MISC. LAND APPLICATION NO.83 OF 2021

*(Arising from the Resident Magistrate Court of Dodoma at Dodoma in Land
Appeal No. 16 of 2021)*

MUSTAFA IDD HUNGU.....1st APPLICANT

ZAINABU IDD HUNGU.....2nd APPLICANT

Versus

HABIBU IDD..... RESPONDENT

RULING

Date of last Order: 20/07/2022

Date of Ruling: 27/07/2022

Mambi, J.

This Ruling emanates from the application filed by the applicants for leave to appeal to the Court of Appeal. The applicants filed a chamber summons under Section 5(1) of the Appellate Jurisdiction Act, Cap 141 R.E 2019

supported by their joint affidavit. The applicants pray to this court to grant leave to enable them to appeal to the Court of Appeal against the decision made by the Resident Magistrate with extended jurisdiction. During hearing, the applicants appeared under the services of Mr. Fred Kalonga while the respondent appeared under the services of Mr. Justus Magezi.

The applicants through their learned Counsel briefly submitted that they pray to adopt their affidavit which contains point of law for their application especially under paragraph 5.

In response, the respondent counsel objected the application arguing that the application lacks merit for their joint affidavit contain no points of law which need to be addressed by the Court of Appeal.

I have keenly perused the documents and considered brief the submissions made by both parties including an affidavit filed by the applicants to find out whether this court has been properly moved and whether this application has merit or not. The main issues in my considered view is, whether the applicant has advanced clear points of law and grounds to warrant this court to grant leave to appeal to the court of Appeal. In other words, this Court needs to determine as to whether there are points of law that has been raised by the applicants to enable this Court to grant leave for them to appeal to the Court of Appeal. It is the settled position of the law that for the court to consider an application for leave to appeal to the Court of Appeal, there must be point/s of law to be determined. It is also trite law that grant of leave or certificate to appeal to the Court of Appeal is a discretionary power of the court.

The law on this point is very clear on what should the court consider before granting leave or certificate to appeal to the Court of Appeal of Tanzania against the judgment and orders given by this Court as I alluded above. It is clear that the decision which is intended to be appealed was made by this Court in the exercise of its appellate jurisdiction. This means that the applicants were right to file an application under the relevant provisions of the law. However, before the High Court grants certificate or leave to appeal to the Court of Appeal the applicant must clearly show the points of laws that were not determined by the judge for magistrate with extended jurisdiction who made the decision against him.

The requirement for showing point/points of law for any party who seeks leave from the High Court to appeal to the Court of Appeal is provided under the Appellate Jurisdiction Act, Cap 141 [R.E.2019]. This is under the section 5 (2) (c) of the Appellate Jurisdiction Act, Cap 141 [R.E.2019] which provides that:

*"no appeal shall lie against any decision or order of the High Court in any proceedings unless the High Court certifies that a **point of law** is involved in the decision or order"*

This was also underscored by the Court of Appeal in **NELI MANASE FOYA VS DAMIAN MLINGA, MISC.APPEAL NO.19 of 1999** at pages 2 and 3. The question is, did the applicants indicated any point of law as required by the law.? I have perused the joint affidavit by the applicants and observed that they have points of law that needs to be determined by the Court of Appeal. This court has in numerous decisions held that certificate or leave

to appeal to the Court of Appeal can only be granted where the applicant has clearly pointed out the points of law in his affidavit. I am also aware that leave to appeal is not automatic rather it is discretionary. Looking at the joint affidavit by the applicants especially para 5, I find that the applicant has established that there are points of law that need to be determined by the Court of Appeal.

In light of what I have observed and reasoned, I find it proper the applicants to be granted leave to appeal to the Court of Appeal as prayed. In the result, I grant the application as prayed. The applicant shall file their appeal to the Court of Appeal within the time prescribed by the law from this date. I make no orders as to costs. It is so ordered.



A. J. MAMBI
JUDGE

26/07/2022

Ruling delivered in Chambers this 26th day of July 2022 in presence of applicants in person and in the presence of the respondent and his advocate Mr. Justus Magezi.



A. J. MAMBI
JUDGE

26/07/2022

Right of appeal explained.

A handwritten signature in blue ink, consisting of a large, sweeping loop followed by several smaller, more intricate strokes.

A. J. MAMBI

JUDGE

26/07/2022